IN THE COURT OF APPEALS FOR THE
SECOND COURT OF APPEALS DISTRICT OF TEXAS

EX PARTE	§	
	§	
	§	**NO. 02-17-00188-CR**
	§	
CHARLES BARTON	§	

APPEALED FROM CAUSE NUMBER 1314404 IN THE COUNTY CRIMINAL COURT NO. 8 OF TARRANT COUNTY, TEXAS; THE HONORABLE CHARLES VANOVER, PRESIDING.

§ § §

STATE'S BRIEF

§ § §

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Oral argument is requested only if Appellant is granted oral argument.

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TO THE HONORABLE COURT OF APPEALS:

THE CASE IN BRIEF

On August 25, 2012, Appellant was charged by Information with nine counts of harassment under Texas Penal Code section 42.07(a)(7) (prohibiting harassment using electronic communications). CR 1: 5–6. On August 8, 2016, Appellant filed a motion to quash the Information, arguing Texas Penal Code Section 42.07(a)(7) was unconstitutional and the Information was insufficient, which was denied by the trial court. CR 1: 45–47 (Motion to Quash); CR 3: 1 (Denying Appellant's Motion to Quash). On April 12, 2017, Appellant filed his Original Application for Writ of Habeas Corpus based on Article 11.09 of the Texas Code of Criminal Procedure, arguing Section 42.07(a)(7) was unconstitutional. CR 1: 49–52 (Application). On May 18, 2017, the trial court denied the Application. CR 1: 63 (Order).

STATEMENT OF FACTS

Appellant's Motion to Quash the Information

At the hearing, Appellant—relying on *Karenev v. State*, 258 S.W.3d 210 (Tex. App.—Fort Worth 2008), *rev'd*, 281 S.W.3d 428 (Tex.Crim.App.2009)—argued that Section 42.07(a)(7) is unconstitutionally vague and overbroad on its face, and unconstitutional as applied to him. CR 1: 45–46 (Motion to Quash); RR 2: 5–8 (Motion to Quash Hearing). Also, Appellant argued that the Information is defective because it does not allege specific incidents of harassment. CR 1: 45; RR 2: 9–10. In response, the State argued that the Information is sufficient because it tracks the language of Section 42.07(a)(7) and provides the manner and means (i.e., email and text) by which Appellant is alleged to have harassed the victim in this case. RR 2: 13. As to Appellant's constitutional challenges to Section 42.07(a)(7), the State responded that *Karenev* was overturned by the Court of Criminal Appeals and therefore does not apply to Appellant's case. *Id.* at 14.

Appellant's Pre-trial Application for Writ of Habeas Corpus

At the hearing, Appellant asked the trial court to incorporate his arguments from his motion to quash and argued once again that Section 42.07(a)(7) is unconstitutionally overbroad and vague. *See* RR 4: 4–5. In response, the State argued that Section is 42.07(a)(7) does not proscribe speech protected by the First

Amendment. *Id.* at 5. Additionally, the State argued that Section 42.07(a)(7) is not unconstitutionally vague. *Id.* at 5–7. At the conclusion of the hearing, the trial court denied the writ based on the reasoning contained in the San Antonio Court of Appeals' decision in *Lebo v. State*, 474 S.W.3d 402, 407 (Tex. App.—San Antonio 2015, pet. ref'd). *Id.* at 10.

SUMMARY OF STATE'S ARGUMENT

Texas Penal Code Section 42.07(a)(7) (Harassment) provides that an offense is committed if, with intent to harass, annoy, alarm, abuse, torment, or embarrass another, a person sends repeated electronic communications in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another. The Appellant was charged by Information with harassing the victim using two forms of electronic communication — emails and texts. Under his first two points of error, Appellant argues that Section 42.07(a)(7) is overbroad and vague. Importantly, two Texas court of appeals cases (*Lebo and Reece*) have held that the type of electronic communication proscribed by Section 42.07(a)(7) is not protected speech under the First Amendment. Based on the reasoning in *Lebo* and *Reece*, a defendant whose repeated emails or texts violate Section 42.07(a)(7) has no intent to engage in a legitimate communication of ideas, opinions, or information. Instead, repeated emails or texts made with the intent to harass, annoy, alarm, abuse, torment, embarrass, or offend—the type of behavior proscribed by Section 42.07(a)(7)—invade the substantial privacy interests of a victim in an intolerable manner. Accordingly the First Amendment does not apply to Section 42.07(a)(7) and the statute is not overbroad. Because the First Amendment does not apply to Section 42.07(a)(7), Appellant must show that the statute is unconstitutionally vague as

applied to him. But Appellant has failed to explain how the harassment statute is unconstitutional as applied to him, and his vagueness challenge therefore fails as well.

Finally, in his third point of error, Appellant argues that the Information does not sufficiently charge him with a violation of Section 42.07(a)(7). However, this Court does not have the jurisdiction to consider the denial of a motion to quash that is not based on a voided statute. Alternatively, the Information is sufficient because it charged Appellant in plain language with eight separate violations of Section 42.07(a)(7) and it tracks the statutory language of Section 42.07(a)(7).

STATE'S REPLY TO APPELLANT'S FIRST AND SECOND POINTS OF ERROR:

Appellant's Contention:

Section 42.07(a)(7) is unconstitutionally overbroad and vague on its face, and vague as applied to Appellant.

State's Reply:

Appellant has failed to establish that Section 42.07(a)(7) is unconstitutionally overbroad or unduly vague.

Arguments and Authorities:

I. Standard of Review

The constitutionality of a criminal statute is a question of law that is reviewed de novo. *Ex parte Lo*, 424 S.W.3d 10, 14 (Tex. Crim. App. 2013). To succeed on a facial challenge, a party must show that the challenged statute always operates unconstitutionally in all possible circumstances. *State v. Rosseau*, 396 S.W.3d 550, 557 (Tex. Crim. App. 2013); *see also Santikos v. State*, 836 S.W.2d 631, 633 (Tex. Crim. App. 1992) ("A facial challenge to a statute is the most difficult challenge to mount successfully because the challenger must establish that no set of circumstances exists under which the statute will be valid."). When considering a facial challenge, a court must presume that the law is valid and that the legislature

did not act arbitrarily or unreasonably in enacting it. *Rodriguez v. State*, 93 S.W.3d 60, 69 (Tex. Crim. App. 2002). The party challenging the statute has the burden to establish its unconstitutionality. *Ex parte Granviel*, 561 S.W.2d 503, 511 (Tex. Crim. App. 1978).

II. Constitutionality of Section 42.07(a)(7)

Appellant argues that Section 42.07(a)(7) is unconstitutional because (1) it is overbroad in that it violates his free speech rights under both the U.S. and Texas constitutions; and (2) it is vague on its face and as applied to him because it contains indefinite terms like "annoy" or "alarm," it does not provide notice to the general public or Appellant what conduct is illegal under the statute, and it does not establish whose sensibilities must be offended. *See* Appellant's Brief at 4–11. Additionally, because Appellant has not argued that free speech protections under Article I, Section 8, of the Texas Constitution are greater than the protections under the First Amendment of the U.S. Constitution, the State will assume that free speech protections are the same under both constitutions. *Tex. Dept. of Transp. v. Barber*, 111 S.W.3d 86, 106 (Tex. 2003); *see* Appellant's Brief at 4–11.

For the following reasons, Section 42.07(a)(7) is not protected speech. A defendant whose emails or texts violate Section 42.07(a)(7) has no intent to engage in the legitimate communication of ideas, opinions, or information that is protected

by the First Amendment. Accordingly, Section 42.07(a)(7) is not overbroad. Also, Appellant has failed to explain how the harassment statute is unconstitutional as applied to him and his vagueness challenge therefore fails as well.

A. Texas Penal Code Section 42.07(a)(7)

According to 42.07(a)(7) (at the time Appellant was charged by information),

> (a) A person commits an offense if, with intent to harass, annoy, alarm, abuse, torment, or embarrass another, he:
> . . .
> (7) sends repeated electronic communications in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another.[1]

See CR 1: 5–6 (Information).

B. Overbreadth and Vagueness

When analyzing a facial challenge, the Supreme Court has stated the following:

> A court's first task is to determine whether the enactment reaches a substantial amount of constitutionally protected conduct. If it does not, then the overbreadth challenge must fail. The court should then examine the facial vagueness challenge and, assuming the enactment implicates no constitutionally protected conduct, should uphold the challenge only if the enactment is impermissibly vague in all of its

[1] Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 2204, ch. 411, § 1, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 10, § 1, eff. March 19, 1993; Acts 1993, 73rd Leg., ch. 900, § 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 657, § 1, eff. June 14, 1995; Acts 1999, 76th Leg., ch. 62, § 15.02(d), eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1222, § 1, eff. Sept. 1, 2001; Acts 2013, 83rd Leg., ch. 1278 (H.B. 1606), § 1, eff. Sept. 1, 2013 (amended 2017) (current version at TEX. PENAL CODE ANN. § 42.07(a)(7)).

> applications. A plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others. A court should therefore examine the complainant's conduct before analyzing other hypothetical applications of the law.

Clark v. State, 665 S.W.2d 476, 482 (Tex. Crim. App. 1984) (quoting *Hoffman Estates v. Flipside, Hoffman Estates*, 455 U.S. 489 (1982)).

A criminal statute is overbroad, in violation of the Free Speech Clause of the First Amendment, if, in addition to proscribing activity that may be constitutionally forbidden, it sweeps within its coverage a substantial amount of expressive activity that is protected by the First Amendment. *Morehead v. State*, 807 S.W.2d 577, 580 (Tex. Crim. App. 1991). When a vagueness challenge involves First Amendment concerns, the statute may be held facially invalid even though it may not be unconstitutional as applied to the appellant's conduct. *Long v. State*, 931 S.W.2d 285, 288 (Tex.Crim.App.1996). In that case, the defendant must only argue that the statute is overbroad on its face because its vagueness makes the statute unclear as to whether it proscribes a substantial amount of protected speech. *United States v. Williams*, 553 U.S. 285, 304 (2008); *Scott v. State*, 322 S.W.3d 662, 665 n.3 (Tex. Crim. App. 2010), *overruled in part on other grounds by Wilson v. State*, 448 S.W.3d 418, 423 (Tex. Crim. App. 2014).

Where no First Amendment rights are involved, however, a court of appeals

need only examine the statute to determine whether it is impermissibly vague as applied to the appellant's specific conduct. *Bynum v. State*, 767 S.W.2d 769, 773–74 (Tex.Crim.App.1989) (citing *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494–95 (1982)). A criminal statute is vague, in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution, if it does not (1) give a person of ordinary intelligence a reasonable opportunity to know what is prohibited and (2) establish definite guidelines for law enforcement. *Scott v. State,* 322 S.W.3d 662, 665 (Tex. Crim. App. 2010) (citing *Bynum v. State,* 767 S.W.2d 769, 773 (Tex.Crim.App.1989), *overruled in part on other grounds by Wilson v. State,* 448 S.W.3d 418, 423 (Tex. Crim. App. 2014).

C. Section 42.07(a)(7) is not unconstitutionally overbroad because it does not criminalize protected speech.

In *Scott*, in the context of an overbreadth and vagueness challenge, the Court of Criminal Appeals decided that the telephone harassment portion of Section 42.07(a)(4) did not implicate the free-speech guarantee of the First Amendment. *Scott v. State,* 322 S.W.3d 662, 668–69 (Tex. Crim. App. 2010) (addressing section 42.07(a)(4)), *overturned on other grounds by Wilson v. State*, 448 S.W.3d 418 (Tex. Crim. App. 2014). The relevant portion of Section 42.07(a)(4) in *Scott* was as follows:

> (a) A person commits an offense if, with intent to harass, annoy, alarm, abuse, torment, or embarrass another, the person:
> . . .
> (4) . . . makes repeated telephone communications . . . in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another.

See Scott, 322 S.W.3d at 669 (citing Tex. Penal Code § 42.07(a)(4)). The *Scott* Court emphasized that while the First Amendment generally protects free communication and receipt of ideas, opinions, and information, "[t]he State may lawfully proscribe communicative conduct (i.e., the communication of ideas, opinions, and information) that invades the substantial privacy interests of another in an essentially intolerable manner." *Id*. at 668–69 (citing *Cohen v. California*, 403 U.S. 15, 21 (1971)). In deciding that the text of Section 42.07(a)(4) is not protected by the First Amendment, the court explained:

> [I]n the usual case, persons whose conduct violates § 42.07(a)(4) will not have an intent to engage in the legitimate communication of ideas, opinions, or information; they will have only the intent to inflict emotional distress for its own sake. To the extent that the statutory subsection is susceptible of application to communicative conduct, it is susceptible of such application only when that communicative conduct is not protected by the First Amendment because, under the circumstances presented, that communicative conduct invades the substantial privacy interests of another (the victim) in an essentially intolerable manner.

Id. at 670.

Likewise, the electronic communications proscribed by Section 42.07(a)(7) in

the present case do not implicate protected speech under the First Amendment. In overruling overbreadth and facial vagueness challenges to Section 42.07(a)(7), two sister appellate courts have concluded that *Scott's* free-speech analysis of Section 42.04(a)(4) is equally applicable to Section 42.07(a)(7). *Lebo v. State*, 474 S.W.3d 402, 407 (Tex. App.—San Antonio 2015, pet. ref'd); *Ex Parte Reece*, No. 11-16-00196-CR, 2016 WL 6998930, at *3 (Tex. App.—Eastland Nov. 30, 2016, pet. ref'd on April 12, 2017). The language of the two statutes is essentially the same. Section 42.07(a)(7) prohibits sending "repeated electronic communications in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another." § 42.07(a)(7). And Section 42.07(a)(4) prohibits making "repeated telephone communications . . . in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another." *See Scott*, 322 S.W.3d at 669 (discussing § 42.07(a)(4)).

As the *Lebo* Court noted, Section 42.07(a)(7) has "the same subjective intent requirement, i.e., that the actor engage in the particular form of communicative conduct with the specific intent to inflict harm on the victim in the form of one of the listed types of emotional distress, i.e., harass, annoy, alarm, abuse, torment, embarrass, or offend." *Lebo*, 474 S.W.3d at 407 (quoting *Scott* 322 S.W.3d at 669). Accordingly, a defendant whose emails or texts violate Section 42.07(a)(7) has "no

more of an intent to engage in legitimate communication of ideas, opinions, or information than an actor whose telephone calls violate Section 42.07(a)(4).” *Lebo*, 474 S.W.3d at 407–08.

Because repeated emails or texts made with the intent to harass, annoy, alarm, abuse, torment, embarrass, or offend invade the “substantial privacy interests” of a victim in “an essentially intolerable manner,” the type of electronic communication proscribed by Section 42.07(a)(7) is not protected speech under the First Amendment. *See Scott*, 322 S.W.3d at 670; *Lebo*, 474 S.W.3d at 408; *Reece*, 2016 WL 6998930, at *3. Thus, Appellant’s overbreadth claim must fail because Section 42.07(a)(7) does not proscribe protected speech under the First Amendment. *See Briggs v. State*, 740 S.W.2d 803, 806 (Tex. Crim. App. 1987) (“In a facial challenge to the overbreadth and vagueness of a law, a court’s first task is to determine whether the enactment reaches a substantial amount of constitutionally protected conduct. If it does not, then the overbreadth challenge must fail.”) (citing *Village of Hoffman Estates, et al. v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489 (1982)).

D. Appellant has not shown that Section 42.07(a)(7) is unduly vague.

When no First Amendment rights are involved, the reviewing court must only determine whether the statute is impermissibly vague as applied to the party’s specific conduct. *See Briggs v. State*, 740 S.W.2d 803, 806 (Tex. Crim. App. 1987);

Bynum, 767 S.W.2d at 774. As mentioned previously, the statute does not regulate communications that fall within the scope of protected free speech under the First Amendment. Thus, this court must only determine whether Section 42.07(a)(7) is vague "as applied" to Appellant. *See Bynum*, 767 S.W.2d at 774. The appellant bears the burden to establish that Section 42.07(a)(7) is unconstitutional as applied to him; that it might be unconstitutional as to others is not sufficient. *Bynum*, 767 S.W.2d at 774.

Here, Appellant is attempting to bring an "as applied" challenge via a pre-trial habeas to Section 42.07(a)(7) before any evidence in his case has been heard. *See* Appellant's Brief at 4–8. A "[p]retrial habeas can be used to bring a facial challenge to the constitutionality of the statute that defines the offense but may not be used to advance an as applied challenge." *Ex parte Ellis*, 309 S.W.3d 71, 79 (Tex. Crim. App. 2010). A pre-trial habeas is unavailable "when the resolution of a claim may be aided by the development of a record at trial." *Ex parte Doster*, 303 S.W.3d 720, 724 (Tex. Crim. App. 2010).

> An as applied challenge is brought during or after a trial on the merits, for it is only then that the trial judge and reviewing courts have the particular facts and circumstances of the case needed to determine whether the statute or law has been applied in an unconstitutional manner.

State ex rel. Lykos v. Fine, 330 S.W.3d 904, 910 (Tex. Crim. App. 2011) (defendant

challenging the Texas death-penalty statute through a pre-trial motion).

Appellant cannot bring forth a record containing the specific facts surrounding his conduct because this case never went to trial; therefore, this Court cannot determine whether Section 42.07(a)(7) is vague as applied to him. *See DeWillis v. State*, 951 S.W.2d 212, 217 (Tex. App.—Houston [14th Dist.] 1997, no pet.). For example, Appellant's claim that the victim in this case texted Appellant more times than he texted her somehow proves that he had no fair notice of what Section 42.07(a)(7) prohibits or whose sensibilities must be offended, is based purely on his own allegations and not any type of evidence produced by Appellant. *See* Appellant's Brief at 6; RR 2: 8–9 (Motion to Quash Hearing); RR 4: 5, 8–10 (Writ of Habeas Corpus Hearing). Appellant, therefore, has failed to establish—because he cannot—how the statute is unconstitutional as applied to him.

Even so, Appellant's claim that Section 42.07(a)(7) as it applies to him is vague can be refuted by examining the statute itself. *See* Appellant's Brief at 4–11. All of the terms—harass, annoy, alarm, abuse, torment, embarrass, and offend—are words with common meanings. *See Ex parte Maddison*, 518 S.W.3d 630, 639-40(Tex. App.—Waco 2017, no pet.) (citing *Ex parte Bradshaw*, 501 S.W.3d 665 (Tex. App.—Dallas 2016, pet. ref'd)). Also, the current statute defines "annoy" and "alarm" in the context of making repeated communications. *See Wilson v. State*, 448

S.W.3d 418, 424-425 (Tex. Crim. App. 2014) (defining "repeated" in section 42.07(a)(4) as recurrent action or action occurring again) (internal quotation marks omitted). In other words, it is not reasonably likely that a defendant can annoy or alarm another without first sending repeated electronic communications like emails or texts. *See Bader v. State*, 773 S.W.2d 769, 770 (Tex. App.—Corpus Christi 1989, no pet.) ("The statute also defines annoy as the act of making repeated telephone communications or allowing the telephone to ring repeatedly".) (internal quotation marks omitted). Section 42.07 sufficiently defines what conduct is unlawful. *See DeWillis v. State*, 951 S.W.2d 212, 217 (Tex. App.—Houston [14th. Dist.] 2012, pet ref'd).

As to Appellant's other complaints, the statute clearly explains whose sensibilities must be offended—it's the recipient of electronic communication. *See* § 42.07(a)(7); *DeWillis v. State*, 951 S.W.2d 212. To be unlawful, the person sending the electronic communications must do so in a manner "reasonably likely" to "annoy" or "alarm" another (i.e., the person receiving text or email). § 42.07(a)(7). Appellant has failed to explain how the harassment statute is unconstitutional as applied to him. Also, Appellant has failed to bring forth a record containing the facts surrounding his conduct for this court to determine whether § 42.07(a)(7) is vague as applied to him.

E. The Court should not rely on its previous opinion in *Karenev*.

This Court previously held that Section 42.07(a)(7) was unconstitutionally vague on its face because the terms "harass, annoy, alarm, abuse, torment, or embarrass" are "susceptible to uncertainties of meaning" and the prohibited conduct is "dependent on each complainant's sensitivity." *See Karenev v. State*, 258 S.W.3d 210, 218 (Tex. App.—Fort Worth), *rev'd on other grounds*, 281 S.W.3d 428 (Tex. Crim. App. 2009). In *Karenev*, the appellant was convicted on one count of harassment, and on appeal he argued that Section 42.07(a)(7) was unconstitutional on its face. *Id.* at 212–13. This Court construed the appellant's vagueness appeal as a complaint that Section 42.07(a)(7) violated the First Amendment protection of free speech. *Id.* at 213. But the Court of Criminal Appeals reversed this opinion because the appellant failed to preserve his facial challenge at the trial level. *Karenev v. State*, 281 S.W.3d 428, 434 (Tex. Crim. App. 2009).

Appellant relies on *Karenev's* reasoning to argue that Section 42.07(a)(7) is unduly vague on its face and as applied to him. *See* Appellant's Brief at 5. However, at the time this Court made its decision in *Karenev*, it did not have the benefit of the Court of Criminal Appeals' decision in *Scott v. State*, 322 S.W.3d 662 (Tex. Crim. App. 2010), *overruled in part on other grounds by Wilson v. State*, 448 S.W.3d 418, 423 (Tex. Crim. App. 2014). In *Scott*, the Court held that Section 42.07(a)(4) does

not implicate the free-speech protections of the First Amendment, and therefore the appellant was required show that the statute was vague as applied to him. *Id.* at 671–72.

As mentioned previously, the reasoning in *Scott* is equally applicable to Section 42.07(a)(7). *See Lebo v. State*, 474 S.W.3d 402, 407 (Tex. App.—San Antonio 2015, pet. ref'd); *Ex Parte Reece*, No. 11-16-00196-CR, 2016 WL 6998930, at *3 (Tex. App.—Eastland Nov. 30, 2016, pet. ref'd on April 12, 2017). In the present case, Appellant has failed to explain how the harassment statute is unconstitutional as applied to him, and his vagueness challenge therefore fails. *See Scott*, 322 S.W.3d at 670. For this reason and because Section 42.07(a)(7) does not proscribe a substantial amount of constitutionally protected conduct, Appellant's first and second points of error should be overruled.

STATE'S REPLY TO APPELLANT'S THIRD POINT OF ERROR:

Appellant's Contention:

The Information is insufficient because it does not clearly specify the manner and means by which Appellant violated Section 42.07(a)(7).

State's Reply:

Because Appellant has not been convicted of harassment under Section 42.07(a)(7), this Court does not have jurisdiction to consider the sufficiency of the Information. Alternatively, the Information sufficiently charged Appellant with harassment under Section 42.07(a)(7).

Arguments and Authorities:

Because there has been no judgment of conviction in the trial court, the order denying Appellant's motion to quash the Information is interlocutory. "The courts of appeals do not have jurisdiction to review interlocutory orders unless that jurisdiction has been expressly granted by law." *Apolinar v. State,* 820 S.W.2d 792, 794 (Tex. Crim. App. 1991); *Taylor v. State,* 268 S.W.3d 752, 755–56 (Tex. App.—Waco 2008, pet. ref'd). No such authorization has been made for an interlocutory appeal of an order denying a motion to quash unless the statute upon which it is based is void or the information or indictment is barred by the statute of limitations. *Ex parte Tamez,* 38 S.W.3d 159, 160 (Tex. Crim. App. 2001); *Ahmad v. State,* 158

S.W.3d 525, 527 (Tex. App.—Fort Worth 2004, pet. ref'd). *Taylor*, 268 S.W.3d at 755–56.

Here, Appellant only argues on appeal that the Information fails to provide him notice of what he is charged with because it does not specify the manner and means by which he violated Section 42.07(a)(7). *See* Appellant's Brief at 11–13. As mentioned previously, Section 42.07(a)(7) is not void. Therefore this trial court does not have jurisdiction to consider Appellant's argument that the Information is insufficient. Alternatively, if this Court decides that it does have jurisdiction to review Appellant's complaints concerning the Information, the Information sufficiently charged Appellant. The Information in plain language charged Appellant with eight separate violations of Section 42.07(a)(7). *See* Cr 1: 5–6 (Information). An information that tracks the statutory language prohibiting certain conduct is generally sufficient. *See State v. Edmond*, 933 S.W.2d 120, 127 (Tex. Crim. App. 1996). This language was unambiguous and provided Appellant notice that he was being charged with harassment under subsection (a)(7):

> The proper test to determine if a charging instrument alleges an offense is whether the allegations in it are clear enough that one can identify the offense alleged. If they are, then the indictment is sufficient to confer subject matter jurisdiction. Stated another way: Can the trial court (and appellate courts who give deference to the trial court's assessment) and the defendant identify what penal code provision is alleged and is that penal code provision one that vests jurisdiction in the trial court?

Teal v. State, 230 S.W.3d 172, 180 (Tex. Crim. App. 2007): TEX. CODE CRIM. PROC. arts. 21.03 and 21.11.

As a result, the State's Information sufficiently charged Appellant with a crime under former Section 42.07(a)(7). In sum, because this Court does not have the jurisdiction to consider Appellant's interlocutory appeal based on his motion to quash, his third point of error should be dismissed for want of jurisdiction. Alternatively, if this Court has jurisdiction, the Information sufficiently charged Appellant, and this Court should overrule Appellant's third point of error.

CONCLUSION AND PRAYER

Appellant suffered no reversible error. Therefore, the State prays that the trial court's ruling be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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/s/ Steven Baker
STEVEN BAKER

CERTIFICATE OF SERVICE

A true copy of the State's brief has been e-served to opposing counsel, Ed G. Jones and Tobias Xavier Lopez, 1319 Ballinger St., Fort Worth, Texas, 76102, edjonesatty@gmail.com, on this, the 27th day of July, 2018.

/s/ Steven Baker
STEVEN BAKER

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